

Sen. Mike Gravel (D-Alaska) appealed to the Supreme Court yesterday to prevent a federal grand jury from investigating an edition of the Pentagon papers published at his initiative.

Asserting that congressional immunity under the Constitution covers "the informing function of Congress," Gravel said that the Beacon Press edition of the Pentagon's top-secret history of the war in Vietnam must fall under that rubric.

He asked Supreme Court Justice William J. Brennan Jr. to stay a decision of the U.S. Court of Appeals for the First Circuit permitting inquiry into the Beacon edition, pending review of the matter by the full Supreme Court.

Unless Brennan acts before next Wednesday, a Boston grand jury probing disclosure of the papers will be free at that time to call witnesses to discuss the Beacon edition.

Gravel contends that the entire four-volume edition of the papers published by Beacon is merely the record of a midnight meeting last June 29 of the Senate Subcommittee on Buildings and Grounds.

Frustrated in a bid to read the papers on the Senate floor, Gravel, who is chairman of the subcommittee, called the meeting for the sole purpose of making public an almost-complete set of the Vietnam war study.

The First Circuit Court of Appeals agreed two weeks ago that Gravel's congressional immunity extends to Dr. Leonard S. Rodberg, an aide who arranged for publication of the papers by Beacon Press.

But the appellate court specifically authorized the questioning of "third parties," such as officials of Beacon, and said they could be asked about Gravel's own actions so long as his "motives" were not investigated.

Denying Gravel's request for reconsideration earlier this week, Chief Judge Bailey Aldrich complained that the papers were of "no conceivable concern" to the business of the Buildings and Grounds Subcommittee.

Aldrich also drew a distinction between "normal and customary republication of a speech in Congress" and "republishing privately all or part of 47 volumes of . . . lawfully classified documents."

In their petition to the Supreme Court yesterday, Gravel's lawyers contended that the appellate court decision was "an unwarranted incursion by the judiciary into the prerogatives of congressmen to adopt whatever procedures to adopt whatever procedures are necessary to accomplish the informing function."

They noted that W. Arthur Garrity Jr., the federal district judge who originally handled the case, had refused to pass on whether Gravel's subcommittee hearing was properly constituted.

Garrity said that was a matter which could only be decided by Congress itself.

At the time of the hearing, Gravel contended that the papers were germane to subcommittee business because they indicated that the lack of funds for construction of public buildings was due to high expenditures on the war in Vietnam.

Although other subcommittee members and Sen. Jennings Randolph (D-W.Va.) were angry that Gravel convened the meeting without proper notice, they declined to take action against him.

Unless republication of the Pentagon papers is protected from investigation, Gravel's petition to the Supreme Court says, "congressmen will have to watch what they say to the people . . . lest it offend the Executive."

Sen. Gravel Seeks High Court Review Of Beacon Probe

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